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Attorney for WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS FARGO HOME  
MORTGAGE, INC. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE:	§	CASE NO. 09-11413-CAG-7
	§	
KENT GERARD JOHNSON and	§	
MARIAH DAWN JOHNSON,	§	
Debtor	§	CHAPTER 7
	§	
WELLS FARGO BANK, N.A.,	§	
SUCCESSOR BY MERGER TO WELLS	§	
FARGO HOME MORTGAGE, INC.	§	
ITS ASSIGNS AND/OR	§	
SUCCESSORS IN INTEREST,	§	
Movant	§	HEARING DATE: _____
	§	
v.	§	TIME: _____
	§	
KENT GERARD JOHNSON and	§	
MARIAH DAWN JOHNSON; C.	§	
DANIEL ROBERTS, Trustee	§	
Respondents	§	JUDGE CRAIG A. GARGOTTA

**MOTION OF WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS  
FARGO HOME MORTGAGE, INC. ITS ASSIGNS AND/OR SUCCESSORS IN  
INTEREST  
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11  
U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO  
§ 362(e)**

**NOTICE**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.**

**WAIVER OF THIRTY DAY REQUIREMENT**

**MOVANT DESIRES TO WAIVE THE REQUIREMENT OF A HEARING WITHIN THIRTY (30) DAYS UNDER §362(e) AND REQUESTS A HEARING AT THE NEXT AVAILABLE DATE.**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS FARGO HOME MORTGAGE, INC. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST, by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.
2. On or about June 01, 2009, Debtors (hereinafter "Debtor") filed a petition for an order of relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C.
3. At the time of filing the Chapter 7 petition, Movant held a Note executed on August 15, 2008, by KENT GERARD JOHNSON and MARIAH DAWN JOHNSON in the original amount of TWO HUNDRED SEVENTY THOUSAND EIGHT HUNDRED FORTY-THREE DOLLARS AND ZERO CENTS (\$270,843.00) with interest thereon at the

rate of 7.000% per annum. A true and correct copy of the Note is attached hereto as Exhibit "A".

4. The indebtedness is secured by a Deed of Trust dated August 15, 2008 and executed by KENT GERARD JOHNSON and MARIAH DAWN JOHNSON on real estate with all improvements known as:

LOT 68, BLOCK O, FOREST OAKS SECTION FOURTEEN, WILLIAMSON COUNTY, TEXAS, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN CABINET AA, SLIDE 244, OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS.

A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B".

5. Prior to the filing of the petition, Debtor was indebted to Movant according to the terms and conditions of the Note and Deed of Trust. Debtor have failed to maintain current the payments due under the note and are presently in arrears for 6 payments through and including the June 01, 2009 payment.

6. The outstanding indebtedness to Movant is \$269,981.40 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Note and Deed of Trust.

7. Further cause may exist to terminate the automatic stay if the Debtors fail to provide proof of adequate insurance and payment of applicable taxes by Debtors as required by the Note and Deed of Trust. Movant hereby demands proof of insurance and payment of applicable taxes by Debtors. Movant reserves the right to further assert that Debtors have failed to pay taxes or insurance based on the response of Debtors.

8. In accordance with the terms of the Note and Deed of Trust, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor have failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Note and Deed of Trust.

11. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

12. The provision of Rule 4001 (a) (3) should be waived and Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be made whole by having all payments brought current. Movant further prays that the Court waive the provision of Rule 4001 (a) (3) and that WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS FARGO HOME MORTGAGE, INC. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER  
TURNER & ENGEL, LLP

BY: /s/ YVONNE KNESEK-FOLTZ

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YVONNE KNESEK-FOLTZ

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ATTORNEY FOR MOVANT

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2009, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER  
TURNER & ENGEL, LLP

/s/ YVONNE KNESEK-FOLTZ 6/17/2009

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ATTORNEY FOR MOVANT

**DEBTORS:**

MARIAH DAWN JOHNSON  
203 TULIP TRAIL BEND  
CEDAR PARK, TX 78613

KENT GERARD JOHNSON  
203 TULIP TRAIL BEND  
CEDAR PARK, TX 78613

**TRUSTEE:**

C. DANIEL ROBERTS  
1602 E. CESAR CHAVEZ  
AUSTIN, TX 78702

**US TRUSTEE:**

515 RUSK, STE 3516  
HOUSTON, TX 77002

**DEBTOR'S ATTORNEY:**

BRYANT BERRY  
4408 SPICEWOOD SPRINGS ROAD  
SUITE 104  
AUSTIN, TX 78759

**PARTIES IN INTEREST:**

None

**PARTIES REQUESTING NOTICE:**

None